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Substantively Consolidated SIPA Liquidation of  
Bernard L. Madoff Investment Securities LLC and  
the Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of  
Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

MITCHELL ROSS, in his capacity as personal  
representative and primary beneficiary of the estate  
of Leon Ross and in his capacity as personal  
representative and primary beneficiary of the estate  
of Miriam Ross,

Defendant.

Adv. Pro. No. 10-04723 (SMB)

**NOTICE OF MEDIATOR SELECTION**

On November 10, 2010, this Court entered the Order (1) Establishing Litigation Case Management Procedures for Avoidance Actions and (2) Amending the February 16, 2010 Protective Order (the “Order”)<sup>1</sup> [Adv. Pro. No. 08-01789 (SMB), Dkt. No. 3141]. Pursuant to the Notice of Applicability filed by Plaintiff Irving H. Picard (the “Trustee”), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.* (“SIPA”), and the substantively consolidated estate of Bernard L. Madoff individually (“Madoff”), in this Adversary Proceeding on November 30, 2010 [Dkt. No. 2], the Order and the avoidance procedures contained therein (the “Avoidance Procedures”) are applicable to the instant matter.

On October 24, 2014 Defendant Mitchel Ross, in his capacity as personal representative and primary beneficiary of the estate of Leon Ross and in his capacity as personal representative and primary beneficiary of the estate of Miriam Ross, filed a motion to dismiss this adversary proceeding [Dkt. No. 33] pursuant to Federal Rule of Civil Procedure 12(b)(6), made applicable by Bankruptcy Rule 7012 (a “Rule 12(b)(6) Motion”).

On October 28, 2014, the Trustee filed with this Court the Notice of Mediation Referral [Dkt. No. 35], pursuant to Paragraph 2D of the Avoidance Procedures, which specifies that upon the filing of a Rule 12(b)(6) Motion, the issues raised in such motion, together with the issues raised in the Complaint, are immediately referred to mediation. Avoidance Procedures, ¶2D.

Through this Notice of Mediator Selection, and pursuant to the Avoidance Procedures and the Mediation Order, made applicable to the Parties upon the filing of the Notice of Mediation Referral, the Parties hereby mutually select from the Mediation Register Ted Berkowitz, from the law firm of Farrell Fritz PC, to act as Mediator in this matter. The Parties

further agree to contact Mr. Berkowitz as soon as practicable after this Notice of Mediator Selection is filed with the Court.

The Parties further agree that no person shall act as Mediator if that person, or that person's law firm, currently represents a party with respect to the BLMIS proceeding, unless the Parties provide prior written consent that the person may act as Mediator.

Pursuant to the Avoidance Procedures, the Parties agree that this mediation will conclude within 120 days from the date that this Notice of Mediator Selection is filed, unless that deadline is extended by mutual consent of the Parties and the Mediator.

Dated: New York, New York

November 7, 2014

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<sup>1</sup> All terms not defined herein shall be given the meaning ascribed to them in the Order.

Of Counsel:

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